

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. _____
Table of Allotments) RM- _____
FM Broadcast Stations)
(Elgin and Lombard, Illinois))

To: Office of the Secretary
Attention: Chief, Allocations Branch
Media Bureau

PETITION FOR RECONSIDERATION

Elgin Broadcasting Co., Inc. ("EBC"), licensee of WJKL(FM), Channel 232A, Elgin, Illinois, by counsel and pursuant to Section 1.106 of the Commission's Rules, hereby requests that the Commission reconsider its return of the Petition for Rulemaking in which EBC proposed the reallocation of Channel 232A from Elgin, Illinois to Lombard, Illinois, and the modification of license for station WJKL to specify operation at Lombard at its community of license.¹ As demonstrated herein, the reallocation proposal complies with the Commission's policy for pre-1964 grandfathered short-spaced station allotments and is in the public interest. Accordingly, the Commission should reconsider its dismissal and promptly initiate EBC's reallocation request.

¹ This petition is timely filed within 30 days of the date of dismissal. See Letter to William D. Silva from John A. Karousos, Assistant Chief, Audio Division, Media Bureau (dated March 11, 2004).

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DISCUSSION

EBC commenced this proceeding on December 18, 2003 with its filing of a Petition for Rule Making ("Petition") requesting that the Commission initiate a proceeding to amend the FM Table of Allotments to reallocate Channel 232A from Elgin, Illinois to Lombard, Illinois and modify the license for WJKL to specify operation at Lombard as its community of license. EBC demonstrated in its Petition that the proposed change in WJKL's community of license would not only comply with the Commission's technical requirements, but would also enable EBC to provide the community of Lombard with its first local aural transmission service while not depriving Elgin of local broadcast service.

On March 11, 2004, however, the Media Bureau notified EBC that it was returning its Petition. The Bureau's letter stated that the proposal was unacceptable because WJKL, a pre-1964 grandfathered short-spaced station, is short spaced to second-adjacent channel stations WZZN(FM) and WLIT-FM, Chicago, Illinois, and WJKL's proposed change in transmitter site would increase the short spacings. The Bureau explained that Section 73.213(a)(4) of the Commission's Rules, which states that there are no distance separation or interference protection requirements for second or third-adjacent channel spacings that have existed continuously since November 16, 1964, is inapplicable to rule making petitions. The Bureau's return letter, however, is in direct conflict with the Commission's policy of exempting pre-1964 second and third-adjacent grandfathered short-spaced stations from the minimum distance spacing requirements at BOTH the application stage and allotment stage. Accordingly, the Bureau must reconsider its return of EBC's Petition.

In 1997, the Commission revised Section 73.213(a) of its Rules to completely eliminate all spacing requirements for grandfathered second and third-adjacent stations at *BOTH the*

application stage and the allotment stage. Specifically, in its Grandfathered Short-Spaced FM Stations Report and Order, the Commission noted that its current second and third-adjacent channel restrictions have prevented grandfathered stations from improving, or even maintaining, existing service areas, and that the removal of spacing requirements for this “small universe of grandfathered stations” would facilitate the improvement of station facilities by allowing this small group of stations to change transmitter sites or modify facilities.² The Commission explicitly stated: “we have no intention of relaxing second-adjacent and third-adjacent channel spacing requirements as *allotment and assignment criteria* for any group *except pre-1964 grandfathered stations*.”³ This clearly-stated Commission directive, which was blatantly disregarded by the Bureau, mandates the reconsideration of EBC’s Petition.

WJKL is a pre-1964 grandfathered station. Contrary to the Bureau’s return letter, the short-spacing that exists between WJKL and second-adjacent channel stations WZZN and WLIT-FM is not a bar to EBC’s reallocation request. As demonstrated, there are no minimum distance requirements among this small universe of pre-1964 grandfathered short-spaced stations at the allotment stage. Accordingly, EBC’s proposed reallocation of WJKL complies with the Commission’s technical requirements.

Moreover, in its return letter, the Bureau states that the proposed reallocation is unacceptable because it involves a change in transmitter site, and the Commission has only allowed grandfathered FM stations to change their community of license when there is no change

² See Grandfathered Short-Spaced Stations, Report and Order, 12 FCC Rcd 11840 (August 8, 1997) (“Report and Order”) at ¶¶ 20-29. The Commission stated: “In the period between 1964 and 1987, when second- and third-adjacent channel grandfathered stations were able to modify facilities without spacing requirements, we did not receive interference complaints resulting from such modifications. We believe the small potential for interference is outweighed by facilitating the ability of this small group of stations to change transmitter sites or modify facilities.” Report and Order at ¶ 27.

in transmitter site or authorized facilities. Contrary to the Bureau's return letter, the Commission has in fact permitted pre-1964 grandfathered short-spaced stations to change their community of license and transmitter site or authorized facilities through rulemaking proceedings.⁴

Furthermore, the public interest benefits in this particular case are compelling and support grant of EBC's reallocation request. Specifically, grant of EBC's requested reallocation will not only ultimately provide the community of Lombard with its first local service, but will also result in a net increase in service to 3,338,170 people, or a 288.9% gain in population served, thereby making a more efficient use of the FM spectrum.⁵

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³ Id. at ¶ 29 (emphasis added).

⁴ See Albemarle and Indian Trail, North Carolina, 16 FCC Rcd 13876 (2001) (authorizing a pre-1964 grandfathered short-spaced station to change community of license and transmitter site); San Rafael, California, 5 FCC Rcd 1892 (1990) (permitting a pre-1964 short-spaced grandfathered station to change channel and transmitter site).

CONCLUSION

The Bureau incorrectly returned EBC's Petition. Because EBC's reallocation proposal complies with the Commission's policy for pre-1964 short-spaced station allotments and will result in a preferential arrangement of allotments by permitting WJKL to provide a first local aural transmission service to a community currently without such service without depriving Elgin of local transmission service, the Bureau must reconsider its dismissal of EBC's Petition for Rulemaking.

Respectfully submitted,

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⁵ In its Petition EBC demonstrated that Lombard has the social, economic, and cultural characteristics of a community and warrants a first local aural transmission service